IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2562 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAUSHIKBHAI SAKARCHANDBHAI PATEL

Versus

ADDITIONAL SECRETARY

Appearance:

1. Special Civil Application No. 2562 of 2004

MR VK JOSHI for Petitioner No. 1

MR KUNJAL PANDYA, AGP for Respondent No. 1-2

MR YV SHAH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 23/09/2004

ORAL JUDGEMENT

RULE. Mr. Kunjal Pandya, learned AGP appears and waives service of notice of Rule on behalf of respondent Nos. 1 and 2 whereas Mr. Y.V.Shah, learned counsel appears and waives service of Rule on behalf of Respondent No.3.

2. The petitioner herein is Chief Officer of Viramgam Municipality. By his application dated 25.07.2003, the petitioner applied for voluntary retirement with effect from 31.10.2003 on medical ground and in view of the fact that petitioner had already completed about 29 years service and therefore, the petitioner was eligible to apply for voluntary retirement. Since the petitioner did not receive any response to the said application, again by his letter dated 22.10.2003, the petitioner requested the State Government to permit the petitioner to retire voluntarily with effect from 30.11.2003. In view of the petitioner's application dated 25.07.2003 for voluntary retirement, the State Government by its letter dated 22.09.2003 (Annexure - F to the petition) called upon the Director of Municipalities to examine the matter and to submit necessary proposal in accordance with Gujarat Civil Services (Pension) Rules, 2002. The Director of Municipalities, in turn, by his letter dated 13.10.2003, called upon the Collector, Ahmedabad to submit a report along with necessary certificates and indicating whether any departmental inquiry is pending at the level of the Collector or Prant Officer. The Additional Collector (Coordination), Ahmedabad, by his letter dated 14.11.2003 (Annexure - J to the petition) informed the Director of Municipalities that, upon making inquiries with the establishment branch and also the office of the Prant Officer, Viramgam, no inquiry was pending or proposed against the petitioner and there were no Government dues recoverable from the petitioner.

3. The petitioner has moved this Court in view of inaction on the part of the respondent authorities particularly the State Government in the Urban Development and Urban Housing Department, in not considering the application of the petitioner for voluntary retirement.

4. As far as respondent No.3-President of the Viramgam Municipality is concerned, by his letter dated 25.07.2003 (Annexure - D to the petition) itself, the President had requested the Director of Municipalities to accept the petitioner's application for voluntary retirement. Mr.Y.V.Shah, learned counsel for the Viramgam Municipality also states at the hearing today that Viramgam Municipality has no objection if the petitioner's application for voluntary retirement is accepted.

5. Mr. Kunjal Pandya, learned AGP for the State

Government and Collector, Ahmedabad, however, states on the basis of parawise remarks dated 14.05.2004 received from the State Government that Mr. Jagdishbhai, Former Vice-President of Viramgam Municipality, by his application dated 17.03.1998 and Mr. Suresh Chandra Thakkar by his application dated 13.04.1998 had made certain allegations against the petitioner, and therefore, by Government letter dated 30.06.1998, Collector - Ahmedabad was required to submit a report for looking into the allegations made against the petitioner, after scrutiny of the Municipality records. Since the Government did not receive any report in response to the said direction, the Government sent reminders dated 17.11.2003 and 20.03.2004 calling upon the Collector, Ahmedabad to submit the report, but the report is not yet received from the Collector, Ahmedabad. It is, therefore, submitted by Mr. Pandya, learned AGP for the State Government that unless the Collector's report regarding the aforesaid allegations is received, the Government would not be in a position to take final decision in the matter.

6. In Rejoinder, Mr.V.K.Joshi, learned counsel for the petitioner states that, in the past, on account of some allegations, the petitioner was placed under suspension by Government Order dated 10.01.1996 and thereafter, after considering the petitioner's representation and the representations of the members of the Viramgam Municipality, the petitioner was reinstated in service by the State Government itself and by Municipality's Resolution No.17 dated 30.10.1998 the period of suspension was treated as 'period spent on duty' and the petitioner was also paid salary for the said period, as indicated in the letter dated 3.06.2003 of the President of the Viramgam Municipality (Annexure-K to the petition). It is submitted that when the so called allegations were made, as far as back as in March/April 1998 and thereafter the petitioner was reinstated in service also, the petitioner cannot be denied voluntary retirement after passage of six years, as no report is submitted against the petitioner, much less, any departmental inquiry is instituted against the petitioner.

7. Having heard learned counsel for the parties it appears to the Court that there is considerable substance in the submissions being made by Mr. Joshi, leaned counsel for the petitioner that, when the petitioner submitted his application dated 25.07.2003 for voluntary retirement, the same should have been considered expeditiously. It is true that the Government decided to

wait for the report of the Collector - Ahmedabad, but, when the Collector has not submitted any report in response to the Government letter dated 30.06.1998 and inspite of the reminders dated 17.11.2003 and 20.03.2004, the petitioner's request for voluntary retirement on medical ground cannot be kept pending for an indefinite period.

8. It also appears from the letters dated 14.11.2003 and 25.11.2003 (Annexure - J and Annexure - M to the petition) from the Additional Collector (Coordination) to the Director of Municipalities that according to the Collector - Ahmedabad, there is no pending or proposed inquiry against the petitioner, which statement is made in the letter dated 14.11.2003 after the inquiry is made with the establishment branch of the Collector, Ahmedabad and the Prant Office, Viramgam.

9. In view of the above, this petition is allowed. Respondent No.1 - State Government is directed to consider and decide the petitioner's application for voluntary retirement as expeditiously as possible and in any case within one month from the date of receipt of writ of this Court or certified copy of this order, which ever is earlier and, if there is no pending or proposed departmental inquiry or prosecution against the petitioner, the petitioner's application for voluntary retirement would have to be accepted, as there is no dispute about the petitioner's eligibility to apply for voluntary retirement.

10. If the application for voluntary retirement is accepted, the petitioner shall be paid the retrial benefits expeditiously.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(M.S.Shah,J)
Jayanti*